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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

NOV - 5 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Revision of Part 22 of the
Commission's Rules Governing
the Public Mobile Services

CC Docket No. 92-115

To: The Commission

REPLY COMMENTS OF DICOMM CELLULAR, L.P.

DICOMM Cellular, L.P. ("DICOMM"), by its attorneys,
hereby submits Reply Comments in the above-referenced proceeding.
By these comments, DICOMM is responding to a single point
respecting the Commission's cellular roaming policy raised by one
of the commenting parties. The following is respectfully shown:

I. INTRODUCTION

1. Numerous parties have filed comments in this
proceeding addressing the proposed revisions to Part 22 of the
Commission's Rules governing common carrier mobile services. Of
all the commenters, only Southwestern Bell Corporation ("SBC")
suggested that the Commission's policy on automatic roaming be
addressed in the context of this proceeding. Specifically, SBC
requests that the Commission amend proposed rule 22.901 to
indicate that this rule neither changes existing carrier

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arrangements with roamers nor mandates automatic roaming arrangements. SBC Comments at pp. 21-22.

2. For the reasons set forth below, DICONM disagrees with SBC's suggested modification of proposed rule 22.901. If the Commission decides to modify proposed rule 22.901 -- or adopts any other rule to address its roaming policy -- the Commission should seek to promote the availability of automatic nationwide roaming service by encouraging carriers to enter into bilateral roaming arrangements.^{1/}

**II. Clarification of Commission Roaming
Policy Must Promote Nationwide Roaming
(proposed rule 22.901)**

3. If the Commission decides to address the issue of automatic roaming in this proceeding, its revisions to Part 22 must affirm the commitment of the agency to assure that cellular subscribers are able to place and receive calls while roaming on a nationwide basis with a minimum degree of difficulty. To further accomplish this goal, DICONM suggests that proposed rule 22.901 be amended to reflect the following policies:

^{1/} DICONM's position on intercarrier roaming arrangements is more fully detailed in its August 12, 1992 comments in opposition to the "Petition For Declaratory Ruling Regarding the Provision of Roaming Service" of Albany Cellular Telephone Company, Buffalo Cellular Telephone Company and Genesee Cellular Telephone Company (hereinafter the "DICONM Declaratory Comments"). FCC File No. MSD-92-36.

A. Commission Policy is the
Nationwide Availability of Roamer Service

4. The Commission has repeatedly acknowledged the importance of fostering the nationwide availability of roaming service. For example, in promulgating the initial rules governing the provision of cellular service, the Commission stated that:

[i]n establishing policies for cellular service we have intended to serve the public interest by implementing a nationwide high-capacity mobile communications service capable of providing both local and roaming mobile telephone users the ability to place and receive calls.

Cellular Communications Systems, 86 FCC 2d 469 at ¶75 (1981). To achieve its goal of nationwide availability of roamer service, the Commission's criteria for selecting cellular licensees has included submission of an exhibit indicating the applicant's roamer service proposal. See 47 C.F.R. §§22.914(a)(6) and 22.923(a)(6). Thus, it is clear that the Commission's policy is to promote a seamless nationwide cellular network. The Commission should affirm this policy in the proposed rule.

B. Automatic Roaming Is Preferable

5. SBC suggests that the Commission amend proposed rule 22.901 to indicate that entering into automatic roaming arrangements is not mandatory. According to SBC, allowing

carriers to enter into roaming arrangements at their own discretion is necessary to minimize fraud and other administrative problems of the carriers. SBC's claim ignores the difficulties encountered by subscribers who are relegated to placing roamer calls using cumbersome and expensive manual registration methods. The Commission's express goal is to promote the placing and receiving of cellular telephone calls throughout the nation "with minimal difficulty". Domestic Public Cellular Radio Telecommunications Services, Report and Order, 3 FCC Rcd 7033 at ¶37. This goal is frustrated if automatic roaming is not available to subscribers nationally. Therefore, automatic roaming arrangements between cellular carriers is preferable and the proposed rule should reflect this preference.

C. Intercarrier Roaming Arrangements
Must Be Provided On A Non-Discriminatory Basis

6. SBC suggests that cellular carriers need flexibility to determine which roamers will receive automatic roaming service. This suggestion, however, contradicts the requirements that providers of communications services under Title II of the Communications Act, as amended (the "Act"), must offer their services on a non-discriminatory basis, under just, reasonable and non-discriminatory terms and conditions.

7. It is clear that the Commission construes its jurisdiction over interstate and foreign communications to extend to a broad range of services that are "incidental" to the

transmission of radio communications, including billing and collection services, validation services and credit services. See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Order, 7 FCC Rcd 3528, 3531-32 (1992). In essence, an intercarrier roaming arrangement is a form of validation and billing indistinguishable from others found to be essential communications-related services. See DICOMM Declaratory comments at Section III. Consequently, the provision of roamer service is properly viewed as a communications service subject to Title II of the Act.

8. Furthermore, the Commission has found that if the provider of a communications service possesses market power because of a shortage of alternative suppliers or because customers lack the ability to represent themselves adequately when dealing with the service provider, then the service provider must hold itself out indiscriminately to the public on a common carrier basis. 7 FCC Rcd 3528 at ¶25. Cellular service is a regulated duopoly and only one carrier is licensed to each of the two frequency bands in a market. Consequently, a provider of roaming service possesses market power because of the shortage of alternative suppliers. Additionally, many cellular subscribers only roam on a periodic basis and therefore, lack the ability to adequately negotiate automatic roaming arrangements on reasonable terms and conditions. In other analogous contexts, the Commission has required those who control essential information

of this nature to make it available on reasonable terms and conditions to co-carriers. See DICONM Declaratory Comments at Sections III and IV. Therefore, DICONM suggests that, as an incidental common carrier service, roaming service must be offered indiscriminately to the public on a common carrier basis. This policy should be reflected in the proposed rule.

D. Non-discriminatory Access to Roamer Validation Data and Billing Name and Address Information Must Be Provided By Cellular Carriers

9. Reasonable access to subscriber information respecting billing name and address, telephone number, personal identification number and good standing status of a cellular carrier is a necessary prerequisite to facilitating the provision of roamer service by a foreign carrier. Consequently, the proposed rule should be amended to state that this information must be provided by cellular carriers to foreign carriers on an unbundled, reasonable and non-discriminatory basis. See DICONM Declaratory Comments at Section VI.

E. Roaming Arrangements must be Negotiated in Good Faith and Offered on a Non-Discriminatory Basis

10. To facilitate the development of nationwide roaming, proposed rule 22.901 should provide that cellular carriers must negotiate in good faith to reach automatic roaming agreements without delay. In order to avoid unfair competitive disadvantage in the cellular marketplace, the proposed rule

should further reflect that once a automatic roaming arrangement is entered into with one foreign carrier, automatic reciprocal roaming arrangements can not be refused to other foreign carriers. To permit such a discriminatory practice would be unreasonable under the Act.

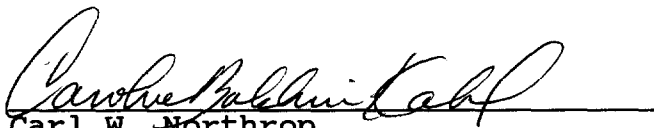
F. Reasonable Requests for Automatic Roaming
Should Be Honored and a Standard of
Reasonableness and Good Faith Adopted

11. As explained above, Commission policy is to promote the ability of subscribers to make and receive calls while roaming, without complicated access arrangements. To further this goal, the Commission should amend or modify proposed rule 22.901 to reflect that the provision of roamer service by connecting landline originated calls to cellular subscribers while roaming is a form of interconnection. As a form of interconnection, reasonable requests for automatic roaming must be honored if technically feasible and beneficial to the efficient provision of service to end users. To the extent reciprocal roaming arrangements serve to implement interconnection arrangements, the proposed rule should incorporate the standards of reasonableness and good faith that govern interconnection arrangements. Cf. FCC Policy Statement on Interconnection of Cellular Systems, 59 RR 2d 1275, Appendix B (1986).

III. CONCLUSION

12. The Commission should affirm its commitment to assure that all cellular subscribers receive roaming services with only a minimal degree of difficulty. As demonstrated in these reply comments, the proposed revision of Part 22 of the rules should reflect that cellular carriers are required to provide automatic roaming on a non-discriminatory basis when reasonably requested to do so.

Respectfully submitted,



~~Carl W. Northrop~~
Caroline Baldwin Kahl
Counsel to DICONM Cellular, L.P.

Bryan Cave
700 Thirteenth Street, N.W.
Suite 600
Washington, D.C. 20005-3960
(202) 508-6000

November 5, 1992

CERTIFICATE OF SERVICE

I, Sharon Powell Jefferson, a secretary in the law firm of Bryan Cave, do hereby certify that on this 5th day of November, 1992, I sent copies of the foregoing **REPLY COMMENTS OF DICOMM CELLULAR, L.P.** via first class mail, postage prepaid, to the following:

Alfred C. Sikes, Chairman*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 814
STOP CODE 0101
Washington, DC 20554

James H. Quello, Commissioner*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 802
STOP CODE 0106
Washington, DC 20554

Sherrie P. Marshall, Commissioner*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 826
STOP CODE 0105
Washington, DC 20554

Andrew C. Barrett, Commissioner*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 844
STOP CODE 0103
Washington, DC 20554

Ervin S. Duggan, Commissioner*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 832
STOP CODE 0104
Washington, DC 20554

Cheryl Tritt, Chief*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
STOP CODE 1600
Washington, DC 02554

John Cimko, Jr., Chief*/
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
STOP CODE 1600D
Washington, DC 02554

Carolyn C. Hill, Esq.
ALLTEL Service Corporation
1710 Rhode Island Avenue, N.W.
Suite 1000
Washington, DC 20036

Mr. Cleve Watkins
Vice President, Technology
The Antenna Specialists Company
30500 Bruce Industrial Parkway
Cleveland, OH 44139

Eliot J. Greenwald, Esq.
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037

John T. Scott III, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

William B. Barfield, Esq.
BellSouth Corporation
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30367-6000

Richard L. Biby, Esq.
Communications Engineering
Services, P.C.
6105-G Arlington Blvd.
Falls Church, VA 22044

Michael Altschul, Esq.
Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Suite 300
Washington, DC 20036

Kevin C. Gallagher, Esq.
Centel Cellular Company
8725 West Higgins Road
Suite 330
Chicago, IL 60631

Tom W. Davidson, Esq.
Akin, Gump, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, DC 20036

Dr. George L. Schrenk
Comp Comm, Inc.
900 Haddon Avenue, 4th Floor
Collingswood, NJ 08108

Louis R. du Treil, Esq.
du Treil, Lundin & Rackley, Inc.
1019 19th Street, N.W., 3rd Floor
Washington, DC 20036

Daniel L. Bart, Esq.
GTE Corporation
1850 M Street, N.W., Suite 1200
Washington, DC 20036

Benjamin F. Dawson III, P.E.
Hatfield & Dawson, Consulting
Engineers, Inc.
4226 6th Avenue, N.W.
Seattle, WA 98107-5021

Jack Taylor, Esq.
International Mobile Machines
Corp.
6116 Brassie Way
Redding, CA 96003

Frederick M. Joyce, Esq.
Joyce & Jacobs
2300 M Street, N.W., 8th Floor
Washington, DC 20037
Mark R. Hamilton, Esq.
Cathleen A. Massey, Esq.
McCaw Cellular Communications, Inc.
1250 Connecticut Avenue, N.W.
Suite 401
Washington, DC 20036

Harry L. Brock, Esq.
Metrocall of Delaware, Inc.
4041 Powder Mill Road, Suite 103
Beltsville, MD 20705

Thomas J. Casey, Esq.
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, DC 20005

Edward R. Wholl, Esq.
NYNEX Mobile Communications
Company
2000 Corporate Drive
Orangeburg, NY 10962

Lucille M. Mates, Esq.
Pacific Bell/Nevada Bell
140 New Montgomery Street
Room 1526
San Francisco, CA 94105

Michael W. Mowery, Esq.
PacTel Cellular
2999 Oak Road, MS 800
Walnut Creek, CA 94596

Louise Cybulski, Esq.
Pepper & Corazzini
1776 K Street, N.W.
200 Montgomery Building
Washington, DC 20006

James F. Rogers, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, DC 20004

Judith St. Ledger-Roty, Esq.
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036

Arthur K. Peters, P.E.
Consulting Engineers
7020 N.W., 11th Place
Gainesville, FL 32605

Robert M. Jackson, Esq.
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037

Harold Mordkofsky
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037

Richard S. Rodin, Esq.
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

Thomas Gutierrez, Esq.
Lukas, McGowan, Nace &
Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, DC 20006

Thomas P. Kerester, Esq.
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

William J. Franklin, Esq.
Pepper & Corazzini
1776 K Street, N.W.
200 Montgomery Building
Washington, DC 20006

Rodney L. Joyce, Esq.
Ginsburg, Feldman & Bress,
Chartered
1250 Connecticut Avenue, N.W.
Washington, DC 20036

James D. Ellis, Esq.
Southwestern Bell Corporation
One Bell Center, Rm. 3524
St. Louis, MO 63101-3099

R. Michael Senkowski, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
Martin T. McCue, Esq.
U.S. Telephone Association
900 19th Street, N.W., Suite 800
Washington, DC 20006-2105

Leon T. Knauer, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, DC 20006

Richard C. Rowlenson, Esq.
Vanguard Cellular Systems, Inc.
2002 Pisgah Church Road
Suite 300
Greensboro, NC 27408


Sharon Powell Jefferson

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